

IN THE MATTER OF
STEPHEN MOSS, D.P.M.

PROBATED SUSPENSION of

LICENSE No. 1146

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BEFORE THE TEXAS STATE
BOARD OF PODIATRIC
MEDICAL EXAMINERS

SITTING IN AUSTIN,

TRAVIS COUNTY, TEXAS

AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against Stephen Moss, DPM. By letters dated July 12, 2004; May 23, 2005; August 9, 2005; November 7, 2005; May 14, 2006 and September 11, 2006 the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Moss of its intent to investigate complaints, concerns or reports filed against him. Dr. Moss was duly notified of the allegations against him and was given the opportunity to present information in rebuttal and to show compliance with the law. Dr. Moss has cooperated with the staff of the Board.

By his signature on this Order, and upon acceptance and entry of this Order by the Board, Dr. Moss does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Moss understands that he has the option, before signing this Agreed Order, to participate in a contested case hearing under the *Administrative Procedure Act*.

The Board and Dr. Moss, in order to avoid the expense, delay and uncertainty of a hearing, have agreed to the entry of an Order dispensing with the need for further action in this matter. Dr. Moss agrees to this Order for the purpose of resolving this proceeding. The Board makes the following Findings of Fact and Conclusions of Law and enters this order:

FINDINGS OF FACT

1. Dr. Moss is licensed as a podiatric physician in the State of Texas (License Number 1146) to practice podiatric medicine and is therefore subject to the jurisdiction of the Board, the Podiatric Medical Practice Act of Texas and the rules of the Board.
2. Complaints were filed against Dr. Moss, and he was provided with notice of the complaints and with an opportunity to respond to the complaints; to present information to show compliance with the law.
3. Dr. Moss, as a podiatrist licensed in the State of Texas, must comply with the provisions of the Podiatric Medical Practice Act of Texas, the Board rules and Board orders.

4. Dr. Moss failed to provide biomechanical orthotic devices for two patients.
5. Dr. Moss failed to appropriately treat the acute symptoms for a patient.
6. Dr. Moss inappropriately submitted charges associated with DME services and charged for services (E/M visits) during the examination for and the dispensing of DME supplies.
7. Dr. Moss' medical records reviewed for the cases were substandard.
8. Dr. Moss' submission of charges for services (i.e. X-rays for separate views of a calcaneus, when there are already multiple views of the foot; X-rays for non-symptomatic foot and ankle when comparative X-ray studies are not warranted) were unnecessary.
9. Dr. Moss failed to timely provide requested medical records to a patient.
10. A patient had difficulty in locating Dr. Moss for securing continuity of podiatric medical care during an office relocation.
11. Dr. Moss failed to obtain the requisite 30 CME hours for the November 1, 2002 - October 31, 2004 period. Review of certificates yields Dr. Moss was deficient 4 hours for the biennium.

CONCLUSIONS OF LAW

1. Dr. Moss is required to follow the provisions of the Podiatric Medical Practice Act, Texas Occup. Code, §202.001, et. seq., and the associated rules of the Board, 22 Tex. Admin. Code § 371.1, et. seq..
2. Texas Occupations Code, §202.253(a)(5) provides that, "the board may refuse to issue a license to practice podiatry to a person, for directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice."
3. Texas Occupations Code, §202.253(a)(16) provides that, "the board may refuse to issue a license to practice podiatry to a person, for failing to practice podiatry in an acceptable manner consistent with public health and welfare."
4. Tex. Occup. Code §202.501(a) provides that, "the Board shall revoke or suspend a license; place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the board."
5. Texas Occupations Code, §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates this chapter.
6. Tex. Occup. Code §202.551 provides that, "the Board may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter."
7. 22 Tex. Admin. Code §376.3 provides in part that, "any podiatric physician who violates any provision of these rules, or any provision of the Act shall be at the discretion of the Board subject to the following penalties: cancellation, suspension, revocation, or probated cancellation, revocation, or suspension of the license to practice podiatric medicine."
8. The Findings Of Fact numbers 1 through 11 establish that Dr. Moss violated:
 - (a) **22 Tex. Admin. Code §375.29(a), which provides in part:** A licensee shall comply with all board orders and subpoenas.
 - (b) **22 Tex. Admin. Code §375.29(b) which provides:** A licensee shall cooperate

fully and promptly in any board investigation of the licensee. Cooperation shall include but not be limited to the following: (1) responding to any notice of violation, notice of investigation, or other board correspondence, and (2) providing documentation requested pursuant to an investigation or notice of violation that the licensee possesses, controls, or to which the licensee has access.

(c) 22 Tex. Admin. Code §378.1(a), which provides in part: Each person licensed to practice podiatric medicine in the State of Texas is required to have 30 hours of continuing education every two years for the renewal of the license to practice podiatric medicine. Two hours of the required 30 hours of annual continuing education (CME) may be a course, class, seminar, or workshop in Ethics. It shall be the responsibility of the podiatric physician to ensure that all CME hours being claimed to satisfy the 30 hour bi-annual requirement meet the standards for CME as set by the Board.

(d) 22 Tex. Admin. Code §375.3, which provides in part: (a) The health and safety of patients shall be the first consideration of the podiatric physician. The principal objective to the podiatric profession is to render service to humanity. A podiatric physician shall continually strive to improve his medical knowledge and skill for the benefit of his patients and colleagues. The podiatric physician shall administer to patients in a professional manner and to the best of his ability. Secrets and personal information entrusted to him shall be held inviolate unless disclosure is necessary to protect the welfare of the individual or the community. A podiatric physician shall be temperate in all things in recognition that his knowledge and skill are essential to public health, welfare, and human life. (b) A licensed podiatric physician shall conduct his practice on the highest plane of honesty, integrity, and fair dealing and shall not mislead his patients as to the gravity of such patient's podiatric medical needs. A podiatric physician shall not abandon a patient he has undertaken to treat. He may discontinue treatment after reasonable notice has been given to the patient by the podiatric physician of his intention to discontinue treatment and the patient has had a reasonable time to secure the services of another podiatric physician or all podiatric medical services actually begun have been completed and there is no contract or agreement to provide further treatment.

ORDER

1. Dr. Moss' license to practice podiatric medicine is hereby Suspended for a term of 5 years, commencing on the day after the Order is entered by the Board. The Suspension shall be probated, conditioned upon the successful completion of the provisions set forth below.
2. Dr. Moss shall pay a fine of \$5,000.00 (Five Thousand Dollars and no/100) fully due and payable within 90 (ninety) days after the effective date of this Agreed Order. The Fine shall be probated, conditioned upon the successful completion of the provisions set forth below.

During the 5-year Probated Suspension:

3. Dr Moss shall permit a Board representative or staff member to periodically enter his place of business and/ or the facility at which he previously maintained an office, announced or unannounced, during the hours of 8:00 a.m. to 5:00 p.m. on any weekday that is not a federal holiday to ensure compliance with this Order, and to ensure proper medical records are maintained, including applicable billing records.
4. In addition to the requisite 30 hours of CME for the November 1, 2006 - October 31, 2008 audit period, Dr. Moss is required to obtain an additional 4 hours to compensate for the deficiency during the November 1, 2002 - October 31, 2004 CME period; for a total of 34 hours. Proof of certificates shall be submitted to the Board by November 30, 2008. The additional four (4) hours may consist of ethics or billing courses; offered by the Texas Podiatric Medical Association or the Texas Medical Association.
5. Dr. Moss shall ensure that his patient treatments are properly noted in the patient's medical records, that the medical records support the level of treatment provided and appropriate level of insurance claims filed; whether private or governmental.
6. Entry of this Order shall finally resolve any and all matters or investigations before the Board pending as of the date this Order is approved by the Board.
7. The terms of this Agreed Order, if accepted by the Board, become effective upon approval of the Board.
8. If Dr. Moss fully complies with the terms of the Agreed Order, the Board agrees not to bring any further disciplinary action regarding the facts that are the subject of this Order.
9. Failure to comply with all the terms of this order will subject Dr. Moss to further and additional disciplinary and enforcement action.

GENERAL PROVISIONS

1. Effective Date. This **Agreed Order** shall take effect and become binding upon the approval by the Board.
2. No Waiver. No waiver of any of the terms of this **Agreed Order** shall be valid unless mutually agreed to in writing. No waiver of default of any terms of the **Agreed Order** shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
3. Governing Law. This Agreed Order is entered into pursuant to and shall be construed in accordance with the laws of the State of Texas including *Tex. Occup. Code Ann., §202.001 et. seq., the Podiatric Medical Practice Act.*, and the *Tex. Gov't Code Ann., §2001.001 et seq., the Administrative Procedure Act.*
4. Acknowledgment of Entire Agreement. Dr. Moss acknowledges that he has carefully read this instrument, including all documents or exhibits, if any, that are referred to; that this instrument expresses the entire agreement between the

parties concerning the subjects it purports to cover; and Dr. Moss has executed this instrument freely and of his own accord.

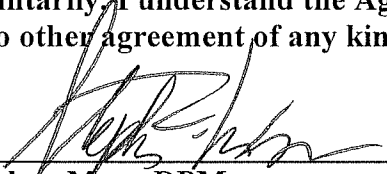
5. Notice. Any notice to be given under the terms of this **Agreed Order** by either party to this order shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to the following addresses:

Stephen Moss, DPM
30711 Forestry Drive
Spring, TX 77386

Texas State Board of Podiatric Medical Examiners
Investigations Division
P.O. Box 12216
Austin, TX 78711-2216

6. Upon approval of this Agreed Order by the Board, the Presiding Officer and the Executive Director are authorized to sign the Order on the Board's behalf.

I, Stephen Moss, DPM, have read and understand the foregoing Order. I understand that by signing, I waive the right to a hearing before the State Office of Administrative Hearings and to judicial review of the Agreed Order. I sign it voluntarily. I understand the Agreed Order contains the entire agreement and there is no other agreement of any kind, oral, written or otherwise.



Stephen Moss, DPM

10/3/06

Date

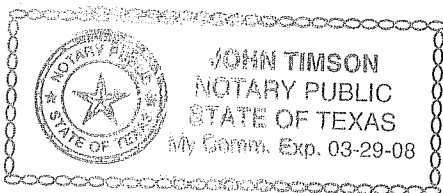
IN THE STATE OF TEXAS §

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COUNTY OF Montgomery §

BEFORE ME, on this day personally appeared Stephen Moss known to me, who first, being duly sworn, signed the foregoing **Agreed Order** in my presence.

SIGNED on this the 3 day of October, 2006.



John Timson
(Printed Name of Notary Public)

[Signature]
Notary Public, in and for the State of Texas

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 5th day of February, 2007, after a Board vote.

Bradford Glass DPM
Bradford Glass, D.P.M.
Board President

[Signature]
Hemant Makan
Executive Director